In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 953

INDUSTRIAL WORKERS OF THE WORLD, ET AL., PETITIONERS

v.

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM IN OPPOSITION

Petitioners seeks review of a decision of the Court of Appeals for the District of Columbia Circuit which held that they were barred by laches and for failure to exhaust administrative remedies from contesting the validity of the actions of the Attorney General in 1949 and 1953 listing petitioner Industrial Workers of the World as an organization seeking to alter the form of government of the United States by unconstitutional means. The court below did hold, however, that petitioners were entitled to maintain an action in the district court to compel the Attorney General to hold a hearing to determine whether the continued

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listing of I.W.W. was arbitrary and unreasonable in light of the decision of the Court of Appeals for the Seventh Circuit in *Thompson* v. *Immigration and Naturalization Service,* 332 F. 2d 167. The court below, therefore, remanded the case to the district court for further proceedings.

Petitioner I.W.W. was originally listed as an organization seeking to alter the form of the government of the United States by unconstitutional means in 1949 pursuant to Executive Order 9835. Public notice of the listing was given in the Federal Register, 14 F.R. 2371, and petitioners admit having actual notice of the listing at least as early as July 7, 1949 (J.A. 22). Subsequent to this Court's decision in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, I.W.W. was redesignated under Executive Order 10450. Public notice of the redesignation was given by publication in the Federal Register, 18 F.R. 2741, on May 12, 1953. Pursuant to regulations adopted by the Attorney General, I.W.W. was given an opportunity to challenge the proposed designation by filing a notice of contest, but, when it did not file such a notice within the time prescribed, it was deemed to have acquiesced in the designation. I.W.W.'s default in failing to file a notice of contest was specifically brought to its attention by letters of January 13, 1954, February 1, 1954, July 31, 1956, April 22, 1957, and January 13, 1960 (J.A. 23–24). Yet, the complaint in the present action was not filed until May 4, 1965, although it was conceded by petitioners in the district court that they "have no legal excuse for their delay of twelve years in seeking a

judicial determination of their allegations relative to their designation under Executive Order No. 10450." (J.A. 1, 24.)

On these facts, the court below was clearly correct in holding that petitioner's challenge to the designations which occurred in 1949 and 1953 was barred by laches and by petitioners' failure to exhaust the administrative remedies. Petitioners have failed to establish any reason why the Attorney General should now be put to the burden of proving that action taken by one of his predecessors some fourteen years ago was correct, or why their failure to seek redress for a period of twelve years should be excused. See *Jones* v. *Summerfield,* 265 F. 2d 124 (C.A.D.C.), certiorari denied, 361 U.S. 841; *Landell* v. *Northern Pac. Ry. Co.,* 122 F. Supp. 253 (D. D.C.), affirmed, 223 F. 2d 316 (C.A.D.C.), certiorari denied, 350 U.S. 844. See, also, *National Lawyers Guild* v. *Brownell,* 225 F. 2d 552, certiorari denied, 351 U.S. 927.

It should also be noted that the decision of the court below held that petitioners are entitled to have the district court consider whether the Attorney General should be compelled to hold a hearing to determine whether the continued listing of the I.W.W. is reasonable. The court of appeals recognized that a resolution of that question may require "some consideration of the factual background for [petitioner I.W.W.'s] designation." The court also concluded that "consideration must be given to new evidence" and "that reasonable consideration must be given to newly announced legal doctrine." (Pet. App. 11.)

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.